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WORLD CONFERENCE AGAINST RACISM,
RACIAL DISCRIMINATION, XENOPHOBIA
AND RELATED INTOLERANCE

Preparatory Committee
Inter-sessional open-ended working group
Geneva, 6 - 9 March 2001

Item 4 of the provisional agenda

DRAFT DECLARATION AND PROGRAMME OF ACTION OF THE WORLD CONFERENCE

Contribution*/ submitted by Women's International League for Peace and Freedom

The Secretary-General has received the following contribution which is circulated in accordance with Economic and Social Council resolution 1996/31.

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REQUEST THAT COMPENSATORY REMEDIES BE PART OF THE THEME FOR THE WORLD CONFERENCE AGAINST RACISM

Submitted September 2000

Summary of Request

1. The Women's International League for Peace and Freedom requests that the square brackets around the word "compensatory" be removed in the text of theme 4 of the agenda to allow for a full discussion of all forms of remedies, including compensatory remedies, at the 2001 World Conference in South Africa.

2. On 5 May 2000, the First Preparatory Committee for the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance adopted the themes for the Conference. There was extensive debate on theme 4 resulting in brackets being placed around the word "compensatory" in that theme.

3. Historically, remedies for racism, racial discrimination, xenophobia and related intolerance have included compensation for the harm inflicted on those against whom these acts were directed. The Convention to Eliminate All Forms of Racial Discrimination (CERD) includes a need to find adequate remedies for institutional racism. To eliminate the concept of compensatory remedies from this theme belies this history and severely restricts a full and meaningful discussion of effective remedies.

Background in Support of Request

4. Reparations is the concept frequently associated with providing a remedy for egregious violations of human rights and fundamental freedoms. See Theo Van Boven (E/CN.4/sub.2/1993/8). The primary form reparations has taken for victims of egregious violations that were based on the race or ethnicity of the victimized group has been compensatory.

5. The United Nations has accepted compensatory remedies, whether called reparations, restitution or redress, as a legitimate and important remedy in a number of cases including those affecting the survivors of the Jewish Holocaust, Japanese Americans forced into concentration camps during World War II, the Japanese "Comfort Women," the political prisoners in Argentina and others.

6. A number of ethnically and racially identifiable groups throughout the world have not had full and adequate redress for egregious violations of human rights and fundamental freedoms by governments and corporations responsible for these violations. Governments and corporations have invaded their lands, stolen their property, forced them into slavery, demonized and maltreated them as a group and because of their group racial or ethnic identity, barred them from full, open and equal participation in the society, and been unjustly enriched by these actions.

7. The human atrocity of the Trans-Atlantic Slave Trade and the centuries of enslavement of African people followed by government supported discrimination, institutionalized racism and corporate unjust enrichment is but one major example. Oppression of people of African descent in Europe and the Americas today that flows directly from the history of their ancestors enslavement has resulted in "gross violations of human rights and fundamental freedoms" today. As this, and other instances of racism are discussed, it is critical that the delegates be able to fully examine and recommend appropriate and adequate remedies for these egregious human rights violations.

Brief Summary of the Limitations of Non-Compensatory Remedies

8. Despite the United Nations Conventions, numerous laws, institutions and, in some countries, affirmative action programs, that were designed purportedly to end racism, it is still prevalent. See e.g., Report of Maurice Glèlè-Ahanhanzo, Special Rapporteur on Racism, E/CN.4/1995/78/Paragraph 32 concerning the United States.

9. Racially and ethnically identifiable groups in many countries throughout the world continue to be displaced, marginalized, unfairly imprisoned, brutalized and murdered. Representatives of a number of these groups were represented at the First Preparatory Meeting of the World Conference Against Racism including the Dalits in India, the Gypsy's in Europe, and Latino/as, Native Americans and African Americans in the United States and Canada.

Conclusion

10. The importance of compensatory remedies to fully and adequately redress the violations of human rights that flow from racism, racial discrimination, xenophobia and other forms of intolerance have been discussed by a number of authors. The following is a bibliography of some of this work.

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DRAFT DECLARATION AND PROGRAMME OF ACTION OF THE WORLD CONFERENCE

Contribution*/ submitted by Physicians for Human Rights

The Secretary-General has received the following contribution which is circulated in accordance with Economic and Social Council resolution 1996/31.

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PHYSICIANS FOR HUMAN RIGHTS

Statement to the
The Inter-sessional Working Group

UN World Conference Against Racism, Racial Discrimination, Xenophobia And Related Intolerance

Racial and Ethnic Disparities in Diagnosis and Treatment in Health Care: The United States Example

National policies forbidding racial discrimination have been enshrined in US civil rights laws and have essentially eliminated de jure discrimination in the United States. Nevertheless, Physicians for Human Rights (PHR) is aware that race and ethnicity still play a pervasive role in social, economic and political practices in the US. It is therefore with disappointment, though not surprise, that PHR notes that racial and ethnic biases have manifested themselves in the US health care system.

PHR is deeply concerned about the existence of compelling evidence that racial and ethnic minorities have a poorer health status than their white counterparts in the US. The poorer health status of minority populations in the US is primarily attributable to environmental factors (social, physical, biologic, economic and political) as well as to lack of access to medical care. However, even more disturbing is the fact that a significant contribution to this differential in health status is made by racial/ethnic disparities in the diagnosis and treatment of patients already in the US health care system.

There has been a plethora of studies that support the existence of racial and ethic disparities. The topics of these studies include a wide spectrum of diseases and medical and surgical practice as well as such related issues as cultural competency training in the health professions, cross-racial/ethnic physician-patient communication, patient trust in the health care system, and institutional racism. In most such studies, African-American and, to a less well-documented extent, Hispanics and Native Americans, received less care, and less intensive care, than white patients.

This pattern was found not only for such high-technology interventions as coronary artery bypass grafting, advanced cancer treatment, renal transplantation, or hip and knee replacement, but also even in basic elements of clinical care such as the adequacy of physical examinations, physical histories, and laboratory tests

In the 1990s many studies were conducted which adequately controlled or adjusted for the confounding variables of health insurance status, income, education, severity of disease, comorbidity and hospital type. In some studies, denial of advanced treatment or procedures was shown to disproportionally affect African-Americans with severe diseases who were most likely to benefit from these procedures. Additionally, the 5-year survival rate for black patient groups was significantly lower than the survival rate for white patient groups in the same time period.

The most frequently cited explanations for these differentials were patient choice, alleged cultural beliefs of minority patients, lack of trust in the health care system, or unmeasured socioeconomic variables assumed to be associated with race. However, some recent prospective studies, permitting detailed examination of medical records and interviews with patients and decision-making physicians, have found that patient choice accounted for only a small percentage of the differentials in diagnosis and treatment.

For example, one study of coronary artery disease found that physicians believed their denials of advanced treatment (angioplasty or bypass grafting) to minority patients were based on assessments of the state of the disease or its prognosis. However, the data strongly suggested that physicians unconsciously projected negative racial stereotypes onto these patients, and that such stereotypes were predictive of their treatment recommendations. Another recent study examined the outcomes in a series of several hundred cases in which patients' race was not included in the otherwise complete clinical material presented to decision-making physicians. When the race variable was absent, there was no difference in the treatment recommendations given to the patients.

Physicians for Human Rights believes that such practices, whether covert or overt, conflict most profoundly with the egalitarian and humanitarian commitments of the medical profession and with the ideals of fairness and equality which should be the guiding principles in the management of illness, pain and suffering.

Physicians for Human Rights also strongly believes that the evidence of racial disparities in the US healthcare system runs afoul the United States' obligations under several international human rights instruments including; Article 25(1) of the Universal Declaration of Human Rights, Article 5(e)(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination, and the non-discrimination clauses of the International Covenant on Civil and Political Rights.

PHR strongly endorses the views expressed by the Committee on Economic, Social and Cultural Rights in its General Comment No. 14 wherein the Committee proclaims universal entitlement to "the enjoyment of the highest attainable standard of health conducive to living a life of dignity."

PHR recognizes that race and ethnicity remain powerful and often divisive social factors both nationally and globally. However, PHR believes that a vigorous and coordinated effort by the international community can help to ameliorate circumstances in which biases prevent racial and ethnic minorities from equal enjoyment of the right to health (as recognized by the Commission on Human Rights, the Human Rights Committee and as proclaimed in the Vienna Declaration and Programme of Action).

PHR believes that candid discussion among countries that have vulnerable minority groups about the existence of racial and/or ethnic disparities in their health care systems is a necessary first step to eradicating the problem.

PHR therefore welcomes the opportunity to discuss the prevalence of this problem in other countries. PHR is interested in sharing information and expertise with governmental, non-governmental and professional organizations and agencies with a view to cooperative engagement toward eradicating racial and ethnic biases in the provision of health care.

PHR suggests that all countries initiate quality assurance programs and that those states which are vulnerable to this problem require systematic monitoring for racial/ethnic differentials in treatment patterns as part of quality assurance programs of all organized systems of medical care.

PHR notes that most current cultural competency training available for physicians in the US is limited in scope, does not usually address provider bias, and in some instances may reinforce stereotypic thinking. PHR proposes that the appropriate agencies ensure that cultural sensitivity programs are continuous throughout the undergraduate and graduate years of medical and other health professional training. In the US, for example, these courses should address issues of covert provider bias, and should be required for the accreditation of health professional schools.

PHR strongly encourages the United States to sign, ratify and strictly adhere to the Convention on Economic Social and Cultural Rights. This is one of several means to ensure that health care is available and accessible on an equal basis for racial and ethnic minorities in the US

PHR strongly believes that health is an essential precursor to the enjoyment of all other human rights. If there is discrimination in the provision of health care, then racial and ethnic minorities will never be able to fully enjoy the inalienable rights they share with all other members of the human family. These rights have been recognized by the international community and encoded into international law. PHR believes that the Declaration and Program of Action resulting from the UN World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance is a timely opportunity for the world community take concrete steps toward alleviating this problem worldwide.

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Contribution*/ submitted by
Citizens' Diplomatic Centre for the Rights of Indigenous Peoples

The Secretary-General has received the following contribution which is circulated in accordance with Economic and Social Council resolution 1996/31.

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Citizens' Diplomatic Centre for the Rights of Indigenous Peoples in Consultative Status with the ECOSOC

A Written Statement to the Inter-sessional Working Group of the United Nations on World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance.
September 1, 2000

1) Introduction

The preamble and first article of the Charter of the United Nations establish the close relationship between human rights and security. We believe that, as the international community surveys the twenty-first century, the time to make this relationship much clearer is at hand. The upcoming World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance provides us with a critical opportunity to do so. Among the most pressing concerns is that human rights are sacrificed under the rubric of security. In the course of establishing a New World Order, it is imperative that the international community reexamines security policies in light of the potential for human rights violations, including differential and unfair treatment on the basis of ethnicity. Such reexamination should address the problem of ethnic discrimination underlying decisions regarding military base construction and military training exercises. This problem is particularly relevant in the case of indigenous peoples, for whom human rights are intrinsically related to land rights. The case of indigenous peoples embodies not only ethnic discrimination but also the perpetuation of colonialism - the elimination of which deserves the fullest attention of the international community.

2) A Selected Background

The behemoth American military bases that now carpet the Hawaiian landscape exemplify the problem outlined above. Their existence was assured in the overthrow of the Kingdom of Hawaii by the United States in 1893, which culminated in the illegal annexation of the Hawaiian islands in 1898. Similarly, in direct violation of Article 51 of the Vienna Convention on the Law of Treaties, the Japanese government built its first military

installation in Okinawa in 1876, during the course of the Ryukyu annexation (1872-1879). Through extensive land appropriation and forced labor of the Okinawans, Japans military expansion throughout the Ryukyu islands continued until the end of World War Two. Moreover, following its land offensive on Okinawa in 1945, the US military continued the confiscation of residential land and destruction of cultural property for the purpose of constructing its own military bases. These actions were in clear violation of Articles 46 and 56 of the 1907 Regulations Relative to the Laws and Customs of War on Land (widely known as the Hague Regulations). The US maintains its military installations on Okinawa, despite the reversion of the official administration of Okinawa to Japan in 1972. The fact that, at present, fully 75% of all US military bases and facilities in Japan are located in Okinawa, which constitutes only 0.6% of Japanese territory, is evidence that these security policies are ethnically discriminatory.

The 1990s were witness to burgeoning opposition to the ethnic discrimination surrounding military bases and military training exercises. Principled chiefly on decolonization and the elimination of discriminatory policies, anti-base movements calling for the protection of indigenous and human rights in general continue to unfold around the world. In response to the demands from the Chamorro people, for example, the government of Guam established a Commission on Decolonization to support the movement. In Canadas province of Quebec, the Innu continue to protest air force training by NATO in the airspace over their sacred land. In British Indian Ocean Territory, the Chagos Islanders are protesting against their forced relocation for the sole purpose of military base construction. Back in Japan, the Okinawans expressed their opposition to the military installations and training sites on their ancestral land in public referendums, further engendering the campaign for base removal.

3) Recommendations

We offer the following topics for debate at the 2001 World Conference Against Racism:

1. The formal agenda should include the Relationship Between Ethnic Discrimination and Military Land Use and Ethnic Discrimination and the

Unresolved Issue of Decolonization.

2. The Declaration to be adopted at the conference should emphasize the following principle as an article: Human rights shall not be jeopardized in the name of state security issues. In particular, any construction of military facilities or military training sites that exhibits ethnic discrimination shall not be upheld as a necessity unless it entails people's security based upon the protection of human rights.

3. The Programme of Action to be adopted in conjunction with the conference Declaration should contain the following articles:

a. States shall carry out a formal inquiry into whether ethnic discrimination underlies their decisions regarding the construction of military bases and training sites. States are to submit their findings to the Secretary General of the United Nations by June 2002.

b. The Secretary General of the United Nations shall, after also taking into full consideration information provided by indigenous peoples organizations and non-governmental organizations, submit a comprehensive report on the States findings to the United Nations General Assembly by December 2002.

c. In cases where ethnic discrimination is found to be a factor in the construction of bases and training sites, States are obligated to recognize this in a formal apology and to expedite the removal of bases, the return of all relevant land, the provision of fair compensation and complete environmental restoration.

d. The United Nations General Assembly shall take the necessary steps to ensure the implementation of this Declaration, including granting the General Assemblys Special Committee on Decolonization with the authority to accept and deliberate all necessary information, as provided for in the Declaration on the Granting of Independence to Colonial Countries and Peoples and Article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

e. States shall make annual reports to the General Assemblys Special Committee on Decolonization regarding the progress of base removal and return of land. The Special Committees deliberation of these reports shall take into full consideration information submitted by indigenous peoples organizations and non-governmental organizations, and shall include the participation, as equal observers, of representatives from relevant states, indigenous groups and non-governmental organizations. The results from these deliberations shall be submitted to the United Nations General Assembly for examination.